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10/700,045

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Michael G. Bradley

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EXAMINER

ROBINSON, KITO R

ART UNIT

PAPER NUMBER

3692

MAIL DATE

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10/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/700,045	Applicant(s) BRADLEY ET AL.	
	Examiner KITO R. ROBINSON	Art Unit 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/04/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20 June 2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This action is in reply to the amendment filed on 20 June 2008.
2. Claims 1-31 are currently pending and have been examined.

Information Disclosure Statement

3. The Information Disclosure Statement filed on 20 June 2008 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

Response to Arguments

4. In response to the arguments submitted 20 June 2008, Examiner feels the arguments were persuasive and has made new rejections. See rejections below.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-16 & 17-23 are rejected under 35 U.S.C. § 101 based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876). The process steps in claims (10-13) are not tied to another statutory class nor do they execute a transformation. Thus, they are non-statutory.

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7. Claims 30 & 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The *computer program product comprising code, said code comprising of* Claims 30 & 31 is not a process, machine, manufacture, or composition of matter, or any improvement thereof. Replacing the *computer program product comprising code* with “a computer-executable program tangibly embodied on a computer readable medium” is a suggestion for how to bring this claim into compliance with 35 U.S.C. 101 because “a computer-executable program tangibly embodied on a computer readable medium” is statutory subject matter.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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10. Claims 1-5 and 10-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Tengal et al. 5,940,812, hereafter Tengal in view of Crocker US 2005/0240516.

As per claim 1, 24, 25 & 28

Tengal discloses:

- *receiving the application including at least borrower information, property information, and a first interest rate (see at least the Abstract);*
- *receiving home value information representing an estimated value of the property (see at least figure 1 & 4 Also column 4, lines 34-35);*
- *receiving a second interest rate (see at least Figure 1 & column 4, lines 38-40)*

Tengal does not disclose the following, however Crocker does:

- *determining the indication based on the received application, received home value information, and received second interest rate, the indication representing a likelihood that the mortgage loan will close may- result in the closing (see at least the Abstract).*

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because "it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with" (as taught in Crocker paragraph 0021).

As per claim 2,

Tengal discloses:

- *receiving a date corresponding to when the mortgage loan application will close with the first interest rate (See at least Column 11 line 23-28: a first and second date).*

As per claims 3 & 4

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *using an expiration date for the first interest rate as the date and using the closing date as the date*. However, Crocker, in at least Paragraph 0019, discloses “the originator's (offeror's) computer system receives and stores the floor, ceiling, and expiration date (not beyond closing date) and other data.

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them” (as taught in Crocker paragraph 0021).

As per claim 5

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *using the closing date as the date* but does not disclose *using, as the second interest rate, an interest rate corresponding to a date other than the closing date*. However, Crocker, in at least Paragraph 0023, discloses “For example, the consumer may be indicating a desire to apply for a mortgage to take an interest rate of, say, 6 3/8, but would rather have a rate of 6...the consumer may desire to go to closing rather than wait for other interest rate movement.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “If the consumer can get a better interest rate, it means lower monthly payments (as taught in Crocker paragraph 0023).

As per claim 10,

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *receiving the second interest rate as a current interest rate available for mortgage loans*. However, Crocker, in at least Paragraph 0024, discloses “the situation where a borrower has committed at a 6 1/4 interest rate. If the market rate went down to an interest rate of 6 and the broker has a borrower locked in at 6 1/4...”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “if a borrower commits to a price, some mortgage brokers might prefer to profit from the option... then the broker would make more money by using an option (as taught in Crocker paragraph 0024).

As per claims 11-14

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *determining the indication based on a model, a statistical technique, or a logistic regression as the statistical technique and determining the indication as a score*. However, Crocker, in at least Paragraph 0038, discloses “probability model to determine the probability of certain circumstances occurring. A shock analysis can be used to aid selection of a hedge.”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “interest rate shock analysis has utility in predicting how many loans will close, and the analysis can be used as one means for determining how many of those options will result in a lock. Subsequent analysis can be used to estimate out closings” (as taught in Crocker paragraph 0039).

As per claim 15 & 16

Tengel discloses

- *scaling the score into a range of score values, such that a low score value within the range of score values corresponds to a low likelihood that the loan will close, and a high score value within the range of score values corresponds to a high likelihood that the loan will close (see at least Column 9 line 46-49: Take note the best loan has the highest weighted composite score).* Tengal does not explicitly state the reversal as stated in claim 15. However, it would be an obvious to modify Tengal as stated in claim 15.

Tengel does not disclose the *likelihood that the loan will close*. However Crocker in at least the Abstract.

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because "it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with" (as taught in Crocker paragraph 0021).

As per claims 17 & 29,

Tengel '812 discloses:

- *receiving the mortgage loan application for a property (See at least Fig. 2B item 220: Take note a loan application is generated).*

Tengel does not disclose the following, however Crocker does:

- *determine the score based on the received mortgage loan application, the score representing a likelihood that the mortgage loan application will (see at least Paragraph 0038)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because "it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do

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business with them even if the rate today is not the rate that they are perfectly happy with" (as taught in Crocker paragraph 0021).

As per claim 18,

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *scores for one or more mortgage loan applications*. However, Crocker, in at least Paragraph 0039, discloses "interest rate shock analysis has utility in predicting how many loans will close, and the analysis can be used as one means for determining how many of those options will result in a lock. Subsequent analysis can be used to estimate out closings."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because "it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with" (as taught in Crocker paragraph 0021).

As per claim 19,

Tengel discloses:

- *processing the one or more mortgage loan applications, such that at least one of the mortgage loan applications is processed before another mortgage loan application based on the determined score for the at least one mortgage loan application (See at least Fig. 8 & Column 10 line14-19: lender views application in line display with "best match" first).*

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As per claim 20,

Tengel discloses:

- *prioritizing the one or more mortgage loan application based on the determined scores*
(See at least Fig. 8 & Column 10 line14-19: lender views application in line display with “best match” first, thus a lender does not waste effort and time on unprofitable loans).

As per claims 21, 26 & 30

Tengel discloses:

- *receiving a first score for a first one of the properties*(See at least Fig. 8 & Column 10 line14-19: lender views at least 3 applications in line display with “best match” first);
- *receiving a second score for a second one of the properties* (See at least Fig. 8 & Column 10 line14-19: lender views at least 3 application in line display with best match first);
- *performing a first appraisal of the first property before a second appraisal of the second property, when the first score indicates a greater likelihood of closing than the second score* (See at least Fig. 3B item 326 & Column 6 line 27-30:).

Tengel does not disclose scores. However, Crocker, in at least Paragraph 0039, discloses “interest rate shock analysis has utility in predicting how many loans will close, and the analysis can be used as one means for determining how many of those options will result in a lock. Subsequent analysis can be used to estimate out closings.”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with” (as taught in Crocker paragraph 0021).

As per claim 22,

Tengel discloses:

- prioritizing the first appraisal before the second appraisal based on the first score (**See at least Fig. 8 & Column 10 line17-19: appraisal=current market value and a lender views applications pending in line display and can prioritize from the selection).**

Tengel does not disclose scores. However, Crocker, in at least Paragraph 0039, discloses “interest rate shock analysis has utility in predicting how many loans will close, and the analysis can be used as one means for determining how many of those options will result in a lock. Subsequent analysis can be used to estimate out closings.”

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because “it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with” (as taught in Crocker paragraph 0021).

As per claims 23, 27 & 31

Tengel '812 discloses:

- *receiving a first score for a first one of the properties* (See at least Fig. 8 & Column 10 line14-19: lender views at least 3 applications in line display with best match first);
- *receiving a second score for a one of the properties* (See at least Fig. 8 & Column 10 line14-19: lender views at least 3 application in line display with best match first);
- *performing a first title search of the first property before a second title search of the second property, when the first score indicates a greater likelihood of closing than the second score* (See at least Fig. 3B item 326-329 & Column 6 line 25-27: Take note title searching is included in determining collateral because a person of ordinary skill would know title searching is a part of the lien process).

Tengel does not disclose scores. However, Crocker, in at least Paragraph 0039, discloses "interest rate shock analysis has utility in predicting how many loans will close, and the analysis can be used as one means for determining how many of those options will result in a lock. Subsequent analysis can be used to estimate out closings."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal with the technique of Crocker because "it can provide a tool or means for allowing the originator to capture the commitment from the borrower to do business with them even if the rate today is not the rate that they are perfectly happy with" (as taught in Crocker paragraph 0021).

15. Claims 6, 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tengal in view of Crocker in view of Weiss US 2002/0035520 A1, hereafter Weiss.

As per claim 6,

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *receiving estimates of value of comparable properties in a region corresponding to the property*. However, Weiss, in at least paragraph 0051 discloses the PT system derives or defines criteria for searching sales of comparable properties (i.e., "comparable property criteria").

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal & Crocker with the technique of Weiss because the *comparable property* criteria aids a client, typically a seller, in determining a list price for a property (as taught in Weiss para. 0050).

As per claims 8 & 9

Tengel discloses the limitations as shown in the rejection of Claim 1 above. Tengal does not disclose the limitation of *receiving a median value of properties in a ZIP code for the property and receiving an estimate of an average value of properties in a region corresponding to the property*. However, Weiss, in at least paragraph 0227 discloses "Comparison between markets may be facilitated by obtaining an average or median property valuation for a list of candidate properties in each market or for a representative property in each market."

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal & Crocker with the technique of Weiss because allows the client to determine when within the next two years (e.g., a forecasting period) the % spread between the property valuation of the client's property and the average property valuation for candidate or representative properties in the second market is less than 10%. (as taught in Weiss para. 0226).

16. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Tengal in view of Crocker in view of Weiss as applied to claims 1 & 6 above and in further view of Fraser et al. 5,995,947, hereafter Fraser .

As per claim 7,

Tengel, Crocker & Weiss discloses the limitations as shown in the rejection of Claim 1 & 6 above. Tengal, Crocker & Weiss do not disclose the limitation of *using at least one of a street, a neighborhood, a city, a ZIP code, a zip+4 code, a county, a state, a country, a census tract, or a metropolitan statistical area as the region*. However, Fraser, in at least Column 3 line 59-67 & Column 4 line 5-15 disclose property location, census tract & MSA.

It would have been obvious to one of ordinary skill in the art at the time of the invention to [combine/modify] the method of Tengal, Crocker & Weiss with the technique of Fraser because the given information that may be of interest to lenders, are used to price loans, as well as, compute information regarding the pool of loans (as taught by Fraser in column 2 lines 40-46).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KITO R. ROBINSON** whose telephone number is **(571)270-3921**. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kambiz Abdi** can be reached on **(571) 272-6702**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or **571-272-1000**.

/Kito R Robinson/
Examiner, Art Unit 3692

17 October 2008

/Susanna M. Diaz/
Primary Examiner, Art Unit 3692